

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASMINE MARIE TUCKER,
HOPE WILLIAM JANETTE TUCKER, RILLA
MARIE TUCKER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHERRY ANN BATES,

Respondent-Appellant,

and

RANDY GAY TUCKER,

Respondent.

UNPUBLISHED

March 26, 2009

No. 287956

Branch Circuit Court

Family Division

LC No. 07-003772-NA

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Respondent Sherry Ann Bates (hereafter “respondent”) appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(j).¹ We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court’s decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours, supra* at 633. A finding is clearly erroneous if, although

¹ The parental rights of the children’s father, Randy Gay Tucker, were also terminated but he is not a party to this appeal.

there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(j). Respondent's psychological evaluation revealed that she is vulnerable to patterns of neglect, a chaotic home environment, and domestic violence. It also indicated that respondent's lower levels of intellectual functioning will require many replications before she can learn a task, and she is unlikely to be responsive to insight-oriented therapy. Since this poor prognosis was given in October 2007, respondent has not demonstrated an improved ability to safely parent her children. The record also established that the children would likely be harmed if returned to respondent's care because she is unable to provide care for their special needs.

Further, the allegations of sexual abuse that subsequently surfaced and respondent's reaction to them revealed the extent to which she was unable to protect her children from harm. Respondent failed to inform the police or Child Protective Services when she learned that her daughter had been sexually abused. She advised her daughters not to tell anyone about the sexual abuse, threatening that they would be removed from her care if they did. She also did not take them for a physical medical evaluation or disclose the information to the children's therapist so they could work through emotions during therapy sessions. Instead, respondent largely ignored her daughters, choosing instead to believe the perpetrator's denial. Moreover, the inconsistency in respondent's testimony supported the court's finding that she said whatever she thought would "work best." Her actions repeatedly showed she lacked insight as to how to keep her children safe and the severity of the emotional harm that resulted from the sexual abuse.

Respondent argues that no services were provided to her after the court asserted jurisdiction. However, this argument is not fully supported by the lower court record. Once the children were removed, respondent was offered counseling, transportation to visits, and supervised parenting time. Although petitioner may not have provided respondent with additional services following the children's removal as planned, services are not required in every case; but if petitioner does not offer them, the statute requires that petitioner justify its decision. MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). In this case, petitioner's workers explained that they had not referred respondent for counseling because she was already attending counseling, which she had been doing prior to petitioner's involvement. And, there were no services available to help respondent improve her cognitive reasoning or better understand concepts of childcare. During the year prior to the children's removal, respondent received every service petitioner had to offer. She had Families First, a parent aid, in-home therapy, counseling, and parenting classes. Her progress was never sustained because, due to her intellectual limitations, she was unable to take the information and use it long-term. Respondent never demonstrated that she understood the neglect her children suffered. She never benefited from services, which became apparent when her situation worsened necessitating the children's removal. Thus, there were no additional services that petitioner could have provided, and petitioner was not required to offer every conceivable service before termination may be ordered.

Further, respondent has not provided legal authority to establish that petitioner's failure to make reasonable efforts alone establishes a basis for relief. MCL 712.18f(4). Rather, the absence of reasonable efforts by the petitioner has only been relevant to assessing whether the statutory grounds for termination were established. See e.g., *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). The court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(j) because the children would have been exposed to risk of harm in her care since she was unable to benefit from services, and not because of petitioner's failure to make efforts.

Respondent also argues that the trial court failed to adjudicate the sexual abuse issue and immediately proceeded to termination of parental rights with its second petition, which limited the services provided to her. The second petition, filed December 11, 2007, was an original petition for permanent custody where petitioner sought adjudication based on new allegations related to sexual abuse followed by an immediate disposition of permanent custody. Although the court had previously asserted jurisdiction based on allegations of neglect, under the new petition, in accord with MCL 722.638, petitioner requested termination of respondents' parental rights at the initial disposition due to its belief that respondent failed to protect her children from sexual abuse. However, petitioner was not required to provide services once permanent custody had been filed even when there were new allegations. MCL 712A.19b(5); MCR 3.977(E). Thus, respondent's claim that petitioner failed to adjudicate the allegations of sexual abuse and provide services is without merit.

Finally, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the children. In recognizing that respondent cannot care for their special needs, the court correctly found that termination of parental rights was in the children's best interests. Moreover, contrary to respondent's assertion, there is no evidence of a strong bond between respondent and her children. The evidence showed that the children did not expect help, protection, or safety from respondent. While the children may have had some attachment to respondent, it was not enough to show that the court clearly erred in its best interest determination.

Affirmed.

/s/ Michael J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis